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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 29, 1994

Via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: Rulemaking Comments
MM Docket No. 93-24**

Dear Mr. Caton:

Transmitted herewith, on behalf of RuralVision South, Inc. and RuralVision Central, Inc., please find the original and five (5) copies of their Comments in response the the Order and Further Notice of Proposed Rulemaking in the above-referenced proceeding.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,


Frederick M. Joyce

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enc.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re:)
)
Amendment of Part 74 of the)
Commission's Rules with) MM Docket No. 93-24
regard to the Instructional)
Television Fixed Service.)

To: The Commission

**COMMENTS OF RURALVISION SOUTH, INC.
AND RURALVISION CENTRAL, INC.**

Frederick M. Joyce
Christine McLaughlin
Their Attorneys

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August 29, 1994

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SUMMARY

RuralVision, a wireless cable operator which leases excess capacity airtime from ITFS applicants in rural areas throughout the U.S., respectfully submits its Comments in response to the FNPRM's proposals to improve ITFS processing and to deter abuses of the FCC's processes.

RuralVision opposes the financial documentation requirement for ITFS applicants, or their wireless cable lessees. Such a requirement would impose substantial additional burdens on the FCC's staff, it is contrary to the recent elimination of such requirements for other radio services, and would likely result in protests by wireless cable entities for the sole purpose of gaining access to financial information about their competitors. A better approach would be to severely limit extensions of ITFS construction deadlines based upon lack of funds.

RuralVision also opposes application caps. The caps proposed in the FNPRM may decrease the number of applications that require processing, but they will also decrease the number of new ITFS services that can be instituted. Additionally, by not distinguishing between new applications and modifications for purposes of the proposed caps, the caps could prevent existing multiple-system wireless cable operators and licensees from making technical changes necessary to improve their services.

RuralVision encourages the FCC to adopt an interference-based definition of an applicant's "area of operation" for four-channel Rule purposes. A mileage-based definition, on the other

hand, would allow applicants to propose overlapping systems without having to justify their need for the requested channels.

RuralVision concurs with the FCC's proposals concerning the use of frequency offset operations and requests for a protected service area, since they are consistent with the policies previously announced in the wireless cable rulemaking proceedings. Those policies should be codified into the Rules and enforced.

The FNPRM also proposes several changes concerning the treatment of receive sites. As a general matter, RuralVision believes that ITFS applicants should be required to demonstrate that they can actually provide viable service to all listed receive sites. If that demonstration is made, the receive site should receive interference protection, and its students should be counted for comparative purposes, regardless of distance from the applicant's transmitter site. If an applicant designates receive sites that it cannot serve, those receive sites should not be afforded interference protection and should not be counted for comparative purposes.

Formal accreditation should not be required of receive sites to obtain interference protection or to be credited in comparative proceedings. Several states do not provide for the accreditation of private schools; those schools may be deprived of necessary programming if the FCC restricts their ability to act as receive sites.

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Before the
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Washington, D.C. 20554

COMMUNICATIONS
SECTION

In re:)
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Amendment of Part 74 of the) MM Docket No. 93-24
Commission's Rules With Regard)
to the Instructional Television)
Fixed Service.)

To: The Commission.

**COMMENTS OF RURALVISION SOUTH, INC.
AND RURALVISION CENTRAL, INC.**

RuralVision South, Inc. and RuralVision Central, Inc.
(collectively, "RuralVision"), by their attorneys and pursuant to
Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415,
hereby respectfully submit these Comments in response to the
Commission's Order and Further Notice of Proposed Rulemaking, FCC
94-148 (released July 6, 1994) (the "FNPRM").

I. Statement of Interest

RuralVision has obtained, or applied to obtain, FCC license
authorizations for Multipoint Distribution Service ("MDS")
stations in many rural communities in Ohio, Kansas, Missouri,
Oklahoma, Texas, New Mexico and other locations throughout the
nation. RuralVision also constructs, manages and operates
Instructional Television Fixed Service ("ITFS") facilities for
eligible applicants, pursuant to FCC-approved excess capacity
leases. RuralVision has thus far committed millions of dollars
to the construction and operation of multi-channel wireless cable
systems, and RuralVision-owned or managed wireless cable systems
have been constructed and are in service today.

The development of wireless cable services has, to a great

extent, been made possible by the ability of wireless cable operators to lease excess capacity airtime from ITFS licensees. The ITFS frequencies provide the majority of available channels for wireless cable services; without access to ITFS channels, the provision of wireless cable in many areas would not be technically or commercially possible. As the operator of wireless cable systems in rural areas throughout the United States, RuralVision is well aware that those systems would likely not be viable without the channel capacity leased from ITFS licensees. The converse is true as well; many schools, especially in the rural areas in which RuralVision operates, would not be able to obtain the benefits of ITFS services for their students without the technical, operational and financial assistance of a wireless cable lessee.

In view of the mutual dependence involved in the lessor-lessee relationship, RuralVision has a keen interest in rule changes which may impact its lessors' applications and operations. Consequently, it submitted Comments in response to the Notice of Proposed Rulemaking in this proceeding, supporting the Commission's proposal to adopt a "window filing" procedure for ITFS applications.

RuralVision applauds the FCC's decision in the FNPRM to implement a "window filing" procedure for ITFS. The use of filing windows will likely expedite the processing of ITFS applications and deter speculation. RuralVision also supports the Commission's stated goals, in the FNPRM, of further improving

the ITFS application process and preventing abuses of the FCC's processes. Because of its reliance upon its ITFS lessors, RuralVision submits these Comments concerning the changes to the ITFS application process proposed in the FNPRM.

II. Financial Qualifications.

The FNPRM sought comment on whether to require ITFS applicants to submit proof of their financial ability to construct and operate their proposed stations, and whether to require "wireless cable" lessees to submit financial documentation with their lessors' applications. See FNPRM at ¶¶ 14-15. The Commission noted the increased burden such a requirement would place upon the Commission's staff and upon applicants, and questioned whether such a requirement might result in the filing of frivolous petitions. Id. at ¶ 15.

RuralVision concurs with the FCC's concerns that requiring ITFS applicants and/or their lessees to submit financial documentation may serve to decrease, rather than increase, processing efficiency. As the Commission noted, staff resources will need to be allocated in order to process any financial information submitted; the more detailed the showing required, the more staff resources will be need to process that information.

Moreover, the Commission's concern regarding the potential for frivolous or obstructive protests is well founded. Requiring the submission of financial documentation will provide insincere or obstructionist applicants with yet another issue to litigate.

Moreover, if wireless cable lessees are required to submit financial documentation, an unscrupulous competitor will have an incentive to protest such financial showings in the hopes of obtaining even more detailed information about a competing operator's financing.

The addition of detailed financial requirements to ITFS applications would be a drastic departure from the reverse trend in other radio services. For example, the FCC eliminated financial disclosure statements for most Part 22 applicants many years ago. See Public Land Mobile Services, Report and Order in CC Docket No. 80-55, 48 RR 2d 294 (1980). RuralVision knows of no policy justification for burdening ITFS applicants with this burden that has been eliminated for other applicants.

Rather than imposing these additional burdens upon the Commission and upon ITFS applicants, RuralVision suggests that the Commission amend its Rules governing extensions of time to construct ITFS stations to specify that no extension of an ITFS construction deadline will be granted based upon a lack of funding, with a narrow exception for unanticipated losses of funding subsequent to the grant of an application.

III. Application Caps.

A number of parties proposed that the Commission impose a cap upon the number of applications that non-local entities may file in a single window, and upon the number of applications associated with the same wireless cable entity. See FNPRM at ¶¶ 16-17.

RuralVision opposes the imposition of application caps for several reasons. Although the Commission is correct in observing that application caps "might diminish the number of applications filed," see id. at ¶ 18; reducing the number of ITFS applications is not necessarily in the public interest. Limiting the number of ITFS applications filed may have the undesirable, and presumably unintended, result of limiting the initiation of new educational and entertainment programming services.

Each ITFS-eligible applicant should be entitled to apply for the channels it needs, and to have its application judged upon its individual merits. It should not matter that multiple applicants may enter into agreements with the same wireless cable operator; a school district's need for educational programming is no less compelling when its wireless cable lessee has similar arrangements with other parties.

The adoption of caps may also "retard the development of ITFS systems." See FNPRM at ¶ 18. For example, in rural communities or economically depressed areas, there is likely to be less competition among wireless cable operators for the opportunity to serve those areas. If a willing wireless cable operator has already entered into lease agreements with the maximum number of ITFS applicants permitted in a given window, it is unlikely that such rural schools will have other potential lessees from which to choose. Those schools would have to wait until the next filing window to begin the process of obtaining ITFS services. If applications filed during the first window are

not sufficiently distant from those schools' proposed service area to allow technical compatibility, those schools may be indefinitely precluded from obtaining ITFS services.

Moreover, as the Commission noted, a viable wireless cable operation requires a minimum number of channels. See id. If a wireless cable operator cannot have access to sufficient channels at one time, it will be unable to compete with cable systems and other video programming providers.

Additionally, the caps proposed by the FNPRM do not distinguish between new applications and major change applications. A wireless cable operator with multiple systems, or an existing non-local ITFS licensee with stations in multiple service areas, may be precluded from making necessary or desirable modifications to their systems by the proposed caps.

In short, application caps may have the undesirable effect of delaying ITFS and wireless cable services; conversely, there are no apparent public interest benefits from the adoption of application caps. Consequently, such caps should not be adopted.

IV. Four-Channel Rule Issues.

The FNPRM notes that while the Rules currently limit an ITFS licensee to four channels within a single area of operation, the Rules do not define what constitutes an "area of operation." See FNPRM at ¶ 22. The Commission therefore proposed to adopt a definition of that term, and requested comment on two alternative definitions.

The first proposal would define an "area of operation" as a

fixed distance of twenty miles from the transmitter site. Id. at ¶ 23. The alternative would define an "area of operation" in terms of interference, treating two sites as having different "areas of operation" if both could operate at maximum authorized power on the same channel without co-channel interference. Id.

RuralVision supports the latter of the Commission's proposed definitions. The proposed "twenty-mile rule" does not adequately account for the fact that many ITFS stations serve receive sites at distances far in excess of 20 miles from the station. The service area of a second station proposed by the same licensee could overlap substantially with the first, even if the transmitter sites of the two stations were in distant locations. Where substantial overlap exists, a licensee could be, in effect, authorized to operate on more than one channel group over a single wide area, without being required to justify its need for the additional channels or suffering a comparative disadvantage.

An interference-based definition of an "area of operation" is the more realistic approach. Under that definition, two commonly-controlled stations will not be deemed to have separate areas of operation unless they in fact serve different service areas. The interference-based definition proposed in the FNPRM should be adopted.

V. Offset Operations.

The FNPRM proposes to require the use of frequency offset operations to resolve mutual exclusivity between otherwise grantable ITFS applications, "when all affected transmitters are

capable of handling frequency offset stability requirements."

FNPRM at ¶ 24.

RuralVision supports the FCC's proposal, and submits that the proposed Rule governing offset operations is consistent with the FCC's prior rulemaking Orders. In its previous "wireless cable" rulemaking proceedings, the FCC has promoted offset operations to "increase the number of stations in a geographic area." See Order on Reconsideration in Gen. Docket No. 90-54 and Gen. Docket No. 80-113, 69 RR 2d 1477, 1485 (1991) (the Reconsideration Order). The Commission there stated that it would review proffers to utilize frequency offset operations on a "case-by-case basis." Id. In RuralVision's experience, however, the Commission has rarely granted frequency offset proffers unless the affected applicants expressly agreed to mutual use of offset, and the FCC has generally denied offset proffers where an affected party objected to such a proffer.

As the FNPRM notes, the Commission's current approach often requires it to decide between mutually-exclusive applicants in situations where mutual exclusivity could easily be resolved by offset operations. Under that approach, the Commission's staff is burdened with comparatively evaluating the affected applicants, resulting in the initiation of fewer ITFS services. The Commission's previous ITFS Orders encouraged the use of offset operations to allow for the initiation of additional ITFS services, and to reduce co-channel interference among existing and proposed ITFS facilities. Those policy goals can be met by

codifying the Reconsideration Order's policies for frequency offset operations, and enforcing those policies.

The Commission also stated that it would exempt from the proposed offset Rules those ITFS facilities that predate the current requirement for equipment capable of offset operations and which lack offset capabilities. FNPRM at ¶ 24. RuralVision does not object to the proposed exemption, but submits that the Commission should allow offset proffers by "newcomers" to upgrade the transmitters of those incumbents who were licensed prior to the current Rule Section 74.961(a), who lack equipment capable of offset operations.

The Reconsideration Order stated that the Commission would consider offset proffers by newcomer applicants to be requests for involuntary modification of facilities. See Reconsideration Order, 69 RR 2d at 1485. RuralVision supports the approach annunciated in the Reconsideration Order. Under this approach, the Commission would have the flexibility to decide in each case whether offset operations will permit interference-free operations between a newcomer and an incumbent, and whether the public interest would be served by accommodating the new services proposed by the applicant. Moreover, since the party proposing an involuntary modification must bear all the associated costs, the affected ITFS licensee would receive improved equipment at no cost to itself. Permitting such involuntary upgrades of transmitters may thus improve existing ITFS services and allow for the initiation of new services; any new offset Rules should

allow such involuntary upgrades.

VI. Protected Service Areas.

The FNPRM notes that requests by ITFS applicants for protection of a "wireless cable" protected service area ("PSA") have at times been used to impede new applications or modifications by existing licensees, or to create mutual exclusivity among pending ITFS applications. See FNPRM at ¶ 26. The FNPRM therefore proposes to make protection of the PSA effective only with regard to applications filed after the protection request. Id. at ¶ 27.

RuralVision agrees that the proposed approach would "promote the original policies behind interference protection," see id.; indeed, the Commission Order permitting ITFS applicants to request protection of the PSA stated that such requests would receive only prospective treatment. See Reconsideration Order, 69 RR 2d at 1482. The Commission's intent should have been obvious when it said: "After such a modification application or amendment is granted, the application of any future ITFS applicant" is required to protect the MDS service area. Id. (emphasis added). Requests for the PSA should never have been permitted the preclusive effect that they have sometimes had. To ensure that such requests do not have such preclusive effects in the future, the Commission should adopt the proposal in the FNPRM, and codify the policy annunciated in the Reconsideration Order.

The Commission also requested comments on its proposal to

treat two applications as mutually exclusive if they are filed during the same filing window and are mutually exclusive only because both applicants request a PSA. See FNPRM at ¶ 28. RuralVision generally supports this proposal, with one exception.

Because the PSA is a fixed area, all points within the PSA are entitled to interference protection. Consequently, if any interference from one applicant's proposed station is predicted to any portion of another applicant's PSA, no matter how small, the applications would be deemed mutually exclusive. That is true even where the interfered-with portion of the PSA is not an area where the applicant's services will actually be received (for example, where the interfered-with portion of the PSA is in the middle of a lake).

RuralVision respectfully submits that in such situations, where there will be no "actual" interference to any likely subscriber, the public interest would be better served by granting both applications (or, where only inconsequential interference is predicted to an existing station, by granting the newcomer's application), rather than by affording interference protection to an area in which no subscriber will ever be served. RuralVision therefore requests that the Commission favorably consider requests for waiver of 47 C.F.R. § 74.903(d) where an ITFS applicant can demonstrate that less than 5% of another applicant or licensee's PSA will receive interference, and the nature of the interfered-with area is such that no subscribers or potential subscribers will be affected.

VII. Receive Site Interference Protection.

The FNPRM proposes to restrict interference protection only to those receive sites that are located 35 miles or less from the transmitter. An applicant would not be able to claim eligibility for a license by use of any receive site located more than 35 miles from the transmitter. See FNPRM at ¶ 30.

RuralVision strongly disagrees with the adoption of a fixed mileage limit beyond which receive sites will not be protected. RuralVision has more experience with this particular issue than any other wireless cable operator. In many rural areas, schools and school districts are widely separated; distances of 35 miles or more between schools are not uncommon. If the proposed rule is adopted, those schools in located isolated, sparsely populated rural areas might never be eligible to be a receive site for any ITFS station or application.

If the Commission's objective is to discourage the designation of distant receive sites as a means of artificially increasing the wireless cable operator's service area, that goal would be better served by requiring all ITFS applications to demonstrate the technical feasibility of serving every receive site listed in the application. See Technical Statement of Bernard R. Segal, P.E., attached hereto as Exhibit One. At a minimum, if an ITFS applicant intends to establish its basic qualifications through service to a particular receive site, or if it wishes to count the students at that site in a comparative "tie-breaker" proceeding, the Commission should have some

assurances that the receive site in question can actually be served.

By requiring a demonstration of the technical feasibility of serving each receive site, the Commission would ensure that distant receive sites will actually obtain educational programming services, and that they were not listed merely to preclude a grant of competing ITFS and wireless cable systems in adjoining areas. This approach would also ensure that schools in isolated areas will not be precluded from obtaining interference-free ITFS services.

The FCC should not adopt the limitation on receive sites proposed in the FNPRM; rather, it should adopt a requirement that ITFS applicants demonstrate the feasibility of serving all of their proposed receive sites. RuralVision further requests that the Commission not credit any receive site to which the applicant cannot demonstrate adequate service.

VIII. Interference Studies.

The FNPRM proposes to require the submission of terrain profiles and an analysis of any additional signal loss by using the Longley-Rice propagation model, where an applicant relies upon the radio horizon or terrain blockage to demonstrate interference protection to pre-existing stations or applications. See FNPRM at ¶ 36.

RuralVision supports this proposal, but respectfully submits that the Commission further amend its interference study requirements with respect to receive sites (and portions of the

PSA) that cannot be adequately served by the desired station. Specifically, if an applicant can demonstrate that a receive site or a site within the PSA cannot receive an adequate signal from the desired station, the applicant should not be required to show interference protection to that site. See Exhibit One at 3.¹ RuralVision respectfully submits that where a receive site cannot actually obtain services from the licensee or applicant that designated it, the public interest would not be served by allowing that site to "block" a prospective applicant in an adjacent area. Similarly, where an applicant or licensee cannot actually serve a portion of the PSA, a newcomer should not be precluded for failing to protect an area in which no services are being provided.

RuralVision respectfully submits that its suggested revision to the Commission's interference study rules, along with its proposal concerning demonstrations of the feasibility of serving all receive sites, will ensure that receive sites are designated for proper purposes, i.e., the delivery of educational programming to enrolled students. If an applicant cannot provide an adequate signal to a proposed receive site, there would be no reason to list that site.

IX. Reasonable Assurance of Receive Sites.

The FNPRM proposes requiring all applicants to submit

¹ RuralVision also respectfully submits that, with regard to interference studies of a PSA, the model described in "A Guide to the Use of ITS Irregular Terrain Model in the Area Prediction Mode" would be more appropriate than the Longley-Rice model. See Exhibit One at 4.

"letter[s] of assurance" from all receive sites, listing the names, titles and telephone numbers of the receive sites' contact persons. See FNPRM ¶ 38. The Commission also questions whether it should decline to consider any receive site for which such "adequate assurance" has not been demonstrated. Id.

RuralVision agrees that the Commission's proposal to require the submission of letters of assurance should be adopted, but with some clarification. In adopting such rules, the Commission should clearly state the desired content of those letters of assurance.

As the Commission notes in the FNPRM, there has been a great deal of litigation over specification of receive sites, and whether those receive sites have "consented" or "had an agreement" to receive an applicant's services. Nevertheless, receive sites do change their minds, forget that they have signed consent letters, or, usually after being contacted by a competing wireless cable operator, fear that they may have committed themselves more deeply than they intended and withdraw their previous expressions of interest. Schools may be unfamiliar with ITFS services, and often do not wish to be "obligated" to accept an applicant's programming services; their correspondence frequently so states. Litigious competitors have dissected the wording of receive site letters to argue that the receive sites were improperly listed. All of these activities waste the time of the Commission's staff and of applicants.

To avoid or minimize the number of future frivolous

protests, the Commission should state explicitly the information it desires to see in these letters of assurance. RuralVision suggests that such letters should, as the Commission proposed, contain the names, titles and telephone numbers of the individuals contacted. RuralVision also suggests that, where such a letter is submitted by a school district for several schools within its jurisdiction, that the schools which will receive service be listed therein.

The Commission should allow such letters of assurance to state merely that the receive site is interested in receiving the applicant's programming, rather than that the receive site is "committed" to receiving such programming. The "interested" characterization is the more accurate of the two; regardless of the language used in a letter of assurance, receive sites are free under the Rules to change their minds. Moreover, schools that would like to receive ITFS programming may be hesitant to sign anything if they believe that they will be "locked in" to a particular applicant's services; that fear may cause schools to forgo the opportunity to receive free educational programming.

RuralVision respectfully submits that the requirements adopted by the Commission should recognize the right of local, eligible ITFS applicants to offer their services freely to their fellow educators, and of non-applicant receive sites to maintain flexibility in obtaining educational programming. RuralVision believes that requiring letters of assurance is a good idea, as long as the requirement is clearly written, and as long as it

does not unduly restrict the relationship between applicants and prospective receive sites.

X. Accreditation of Applicants and Receive Sites.

The FNPRM proposes to require ITFS applicants to state whether and by whom each receive site is accredited, and to deny consideration in "tie-breaker" proceedings to any receive site for which this information is not or cannot be provided. See FNPRM at ¶ 40. The FNPRM also requested comment as to whether a majority of an applicant's receive sites should be accredited in order for the application to be grantable, or whether interference protection should be denied to non-accredited receive sites. Id.

The Commission should note that state laws concerning accreditation vary, so that FCC enforcement of this proposed Rule could be extremely difficult. Some states, including Florida and Arizona, do not accredit private schools or require that such schools be accredited by any private accrediting agency. Smaller private schools may not seek private accreditation because of the fees involved; smaller schools can ill-afford to make additional, voluntary expenditures. Those schools still provide formal education to enrolled students, and may have greater needs for instructional programming materials than state-supported public schools.

The Commission's proposal could deprive these worthy schools of the opportunity to receive ITFS programming. If an accredited school's application could suffer a comparative disadvantage for

offering service to non-accredited schools, the applicant would have little incentive to offer its programming to those schools. Likewise, if those non-accredited schools are not entitled to interference protection, it is unlikely that they will be able to fully obtain the benefits of any ITFS services that are offered to them.

If the Commission wishes to require accreditation information for receive sites, RuralVision respectfully submits that, rather than disregard unaccredited receive sites, the Commission should allow some alternative informational showing for these receive sites. For example, a brief letter from the principal of an unaccredited school, stating what degrees or diplomas it awards and explaining the school's curriculum, should sufficiently demonstrate that school's educational qualifications. In that way, private schools located in states that do not accredit them will not be precluded from obtaining instructional programming for their students.

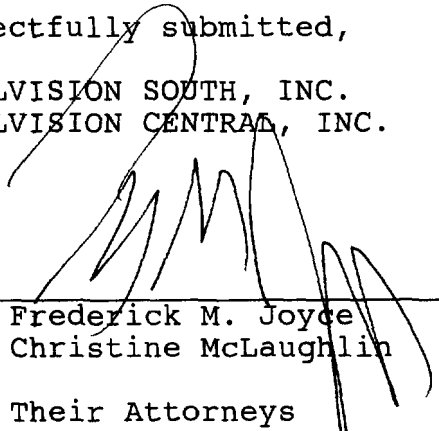
Conclusion

RuralVision generally supports the Commission's efforts to improve the processing of ITFS applications, and urges the Commission to carefully consider the comments submitted in this proceeding.

Respectfully submitted,

RURALVISION SOUTH, INC.
RURALVISION CENTRAL, INC.

By



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Their Attorneys

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August 29, 1994

**ENGINEERING STATEMENT
IN SUPPORT OF COMMENTS
IN RE: AMENDMENT OF PART 74
OF THE COMMISSIONS RULES
WITH REGARD TO THE
INSTRUCTIONAL TELEVISION FIXED SERVICE
MM DOCKET NUMBER 93-24**

The instant engineering statement has been prepared on behalf of RuralVision South, Inc. (RVSI) and RuralVision Central, Inc. (RVCI) in support of comments in the rule-making proceeding in MM Docket Number 93-24 which looks toward amendments of Part 74 of the Commission's Rules with regard to the Instructional Television Fixed Service (ITFS). The intended purposes of the amendments to be made are to increase the efficiency and curtail potential abuse of the Commission's application processes.

One of the proposals set forth to meet the stated objectives is to limit licensing eligibility to receive sites less than 35 miles from the transmitter. RVSI and RVCI believe the adoption of such a limitation would rule out the provision of ITFS service to many schools in sparsely populated rural areas such as are found in New Mexico, Arizona, and many other states. Schools in those regions tend to be widely separated and would be deprived of the benefit of educational services available from an ITFS facility if the 35-mile constraint is adopted.

Accordingly, RVSI and RVCI suggest that in lieu of a blanket 35-mile distance proscription for receive sites, a better approach would be to require a demonstration that